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PARTICIPATION BY UNIDO IN THE VIENNA CONVENTION ON THE LAW OF TREATIES BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN INTERNATIONAL ORGANIZATIONS OF 21 MARCH 1986

Note by the Director-General

Provides background information on the Convention and a draft decision for consideration by the Conference.

I. BACKGROUND

1. On 8 December 1998 the General Assembly of the United Nations adopted resolution 53/100 entitled "United Nations Decade of International Law" by which it recalled, inter alia, that the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986 was one of the conventions adopted under the aegis of the United Nations which have codified the law of treaties, and further recalled the impact of the Convention on the practice of treaties concluded between States and international organizations or between international organizations. That resolution also encouraged international organizations that have signed the Convention to deposit an act of formal confirmation of the Convention, and other international organizations entitled to do so to acceed to it at an early date.

2. The Legal Counsel of the United Nations brought resolution 53/100 of 8 December 1998 of the General Assembly to the attention of the Legal Advisers of the United Nations system. In particular, he referred to the deposit on 21 December 1998 by the Secretary-General, on behalf of the United Nations, of an act of formal confirmation of the Convention. He also expressed the hope that other international organizations would become party to the Convention in the near future.

3. The Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations was prepared by the International Law Commission following a recommendation of the General Assembly of the United Nations. The topic of the Convention was studied by the International Law Commission in consultation with the principal international organizations in order to take into account their relevant practice, as recommended by the General Assembly. Then the draft articles were transmitted both to international organizations and Member States of the United Nations for their comments and observations. Subsequently, they were debated in the Sixth Committee of the General Assembly (Legal Questions). The Convention was adopted by the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations held at Vienna from 18 February to 21 March 1986. At present, this Convention is not yet in force as in accordance with its Article 85 it will enter into force after 35 States will have deposited their instruments of

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ratification or accession. As of 7 September 2001, 26 States had become parties to the Convention.

4. It is to be noted that not only States but also international organizations may become parties to the Convention. This is the first time that international organizations are eligible to become a party to a convention that has codified rules of international law. The Convention is subject to acts of formal confirmation by international organizations that have signed it, and to accession by any international organization that has the capacity to conclude treaties. Thus, to this date, the following international organizations of the United Nations system have become parties to it: the International Atomic Energy Agency (IAEA), the International Labour Organisation (ILO), the International Maritime Organization (IMO), the United Nations (UN), the World Health Organization (WHO) and the World Intellectual Property Organization (WIPO). Also, the International Criminal Police Organization (INTERPOL) and the Organisation for the Prohibition of Chemical Weapons (OPCW), have acceded to the Convention. Other United Nations organizations are in the process of becoming parties and are for the moment signatories to the Convention: the Food and Agriculture Organization of the United Nations (FAO), the International Civil Aviation Organization (ICAO), the International Telecommunication Union (ITU), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Meteorological Organization (WMO). The Council of Europe has signed the Convention.

5. In the United Nations the General Assembly by its resolution 53/100 authorized the Secretary-General "... to deposit, on behalf of the United Nations, an act of formal confirmation of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, as provided for in article 83 of the Convention". In consequence, on 21 December 1998 the Secretary-General deposited on behalf of the United Nations an act of formal confirmation of the Convention.

6. The present Convention constitutes a further stage in the codification of the law of treaties. This is the third multilateral convention resulting from the sustained efforts to codify the law of treaties. It follows upon the 1969 Vienna Convention on the Law of Treaties dealing with treaties between States, and the 1978 Vienna Convention on the Succession of States in respect of Treaties. The Convention also took into account the work embodied in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.

7. The Convention consists of 86 articles and an annex on "Arbitration and Conciliation Procedures Established in Application of Article 66". The articles cover the following matters: Introduction (I), Conclusion and Entry into Force of Treaties (II), Observance, Application and Interpretation of Treaties (III), Amendment and Modification of Treaties (IV), Invalidity, Termination and Suspension of the Operation of Treaties (V), Miscellaneous Provisions (VI), Depositaries, Notifications, Corrections and Registration (VII) and Final Provisions (VIII).

8. The present Convention has an extremely close relationship with the 1969 Vienna Convention on the Law of Treaties. The substance of both conventions is the same although they are entirely independent legal instruments. In accordance with its Article 1 the Convention on the Law of Treaties applies to treaties between States and does therefore not cover international organizations.

II. CONTRIBUTION OF THE CONVENTION TO THE RULE OF LAW

9. The present Convention will contribute to strengthening the rule of international law as it will ensure a uniform application of the law on treaties between international organizations and States or between international organizations. In addition, the Convention will promote the acceptance and respect for the rules and principles of international law pertaining to international organizations.

10. UNIDO has concluded treaties such as the standard basic cooperation agreements with Member States, agreements concerning the establishment of UNIDO investment promotion offices and UNIDO offices and regional offices in Member States, relationship agreements with intergovernmental organizations, etc. These agreements will not be affected by the Convention as in accordance with its Article 4 the present Convention would have no retroactive effect.

11. It is suggested that the 1986 Convention offers a specific legal framework governing formal treaties between international organizations and between international organizations and states and would thus provide stability and predictability in the best interest of UNIDO treaty relations.

III. ACTION REQUIRED OF THE CONFERENCE

12. Article 8, paragraph 3 (d), of the UNIDO Constitution states:

"In addition to exercising other functions specified in this Constitution, the Conference shall:

...

"(d) Have the authority to adopt, by a two-thirds majority of the Members present and voting, conventions or agreements with respect to any matter within the competence of the Organization and to make recommendations to the Members concerning such conventions or agreements".

13. In the light of the information provided in the present document, the Conference may wish to consider adopting the following draft decision:

"The General Conference:

"(a) Takes note of the information provided in the note by the Director-General regarding the participation by UNIDO in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 21 March 1986 (GC.9/6);

"(b) Acknowledges that the General Assembly of the United Nations by its resolution 53/100 of 8 December 1998 encouraged international organizations that have signed the Convention to deposit an act of formal confirmation of the Convention, and other international organizations entitled to do so to accede to it at an early date;

"(c) Encourages the progressive development of international law and its codification as well as the acceptance of and respect for the principles of international law which were among the purposes of the United Nations Decade of International Law;

"(d) Decides to authorize the Director-General to deposit with the Secretary-General of the United Nations an instrument of accession of UNIDO to the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations."